

REFERENCE TITLE: sales tax exemption; commercial photography

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

# **SB 1320**

Introduced by  
Senators Leff, McCune Davis

AN ACT

AMENDING SECTION 42-5061, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION  
PRIVILEGE AND AFFILIATED EXCISE TAXES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-5061, Arizona Revised Statutes, is amended to  
3 read:

4 42-5061. Retail classification: definitions

5 A. The retail classification is comprised of the business of selling  
6 tangible personal property at retail. The tax base for the retail  
7 classification is the gross proceeds of sales or gross income derived from  
8 the business. The tax imposed on the retail classification does not apply to  
9 the gross proceeds of sales or gross income from:

10 1. Professional or personal service occupations or businesses which  
11 involve sales or transfers of tangible personal property only as  
12 inconsequential elements.

13 2. Services rendered in addition to selling tangible personal property  
14 at retail.

15 3. Sales of warranty or service contracts. The storage, use or  
16 consumption of tangible personal property provided under the conditions of  
17 such contracts is subject to tax under section 42-5156.

18 4. Sales of tangible personal property by any nonprofit organization  
19 organized and operated exclusively for charitable purposes and recognized by  
20 the United States internal revenue service under section 501(c)(3) of the  
21 internal revenue code.

22 5. Sales to persons engaged in business classified under the  
23 restaurant classification of articles used by human beings for food, drink or  
24 condiment, whether simple, mixed or compounded.

25 6. Business activity which is properly included in any other business  
26 classification which is taxable under article 1 of this chapter.

27 7. The sale of stocks and bonds.

28 8. Drugs and medical oxygen, including delivery hose, mask or tent,  
29 regulator and tank, on the prescription of a member of the medical, dental or  
30 veterinarian profession who is licensed by law to administer such substances.

31 9. Prosthetic appliances as defined in section 23-501 prescribed or  
32 recommended by a health professional licensed pursuant to title 32, chapter  
33 7, 8, 11, 13, 14, 15, 16, 17 or 29.

34 10. Insulin, insulin syringes and glucose test strips.

35 11. Prescription eyeglasses or contact lenses.

36 12. Hearing aids as defined in section 36-1901.

37 13. Durable medical equipment which has a centers for medicare and  
38 medicaid services common procedure code, is designated reimbursable by  
39 medicare, is prescribed by a person who is licensed under title 32, chapter  
40 7, 8, 13, 14, 15, 17 or 29, can withstand repeated use, is primarily and  
41 customarily used to serve a medical purpose, is generally not useful to a  
42 person in the absence of illness or injury and is appropriate for use in the  
43 home.

1       14. Sales to nonresidents of this state for use outside this state if  
2 the vendor ships or delivers the tangible personal property out of this  
3 state.

4       15. Food, as provided in and subject to the conditions of article 3 of  
5 this chapter and section 42-5074.

6       16. Items purchased with United States department of agriculture food  
7 stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat.  
8 958) or food instruments issued under section 17 of the child nutrition act  
9 (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code  
10 section 1786).

11       17. Textbooks by any bookstore that are required by any state  
12 university or community college.

13       18. Food and drink to a person who is engaged in business which is  
14 classified under the restaurant classification and which provides such food  
15 and drink without monetary charge to its employees for their own consumption  
16 on the premises during the employees' hours of employment.

17       19. Articles of food, drink or condiment and accessory tangible  
18 personal property to a school district if such articles and accessory  
19 tangible personal property are to be prepared and served to persons for  
20 consumption on the premises of a public school within the district during  
21 school hours.

22       20. Lottery tickets or shares pursuant to title 5, chapter 5,  
23 article 1.

24       21. The sale of precious metal bullion and monetized bullion to the  
25 ultimate consumer, but the sale of coins or other forms of money for  
26 manufacture into jewelry or works of art is subject to the tax. For the  
27 purposes of this paragraph:

28       (a) "Monetized bullion" means coins and other forms of money which are  
29 manufactured from gold, silver or other metals and which have been or are  
30 used as a medium of exchange in this or another state, the United States or a  
31 foreign nation.

32       (b) "Precious metal bullion" means precious metal, including gold,  
33 silver, platinum, rhodium and palladium, which has been smelted or refined so  
34 that its value depends on its contents and not on its form.

35       22. Motor vehicle fuel and use fuel which are subject to a tax imposed  
36 under title 28, chapter 16, article 1, sales of use fuel to a holder of a  
37 valid single trip use fuel tax permit issued under section 28-5739, sales of  
38 aviation fuel which are subject to the tax imposed under section 28-8344 and  
39 sales of jet fuel which are subject to the tax imposed under article 8 of  
40 this chapter.

41       23. Tangible personal property sold to a person engaged in the business  
42 of leasing or renting such property under the personal property rental  
43 classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the Constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

(a) A qualifying hospital as defined in section 42-5001.

(b) A qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind, visually impaired and multihandicapped children from the time of birth to age twenty-one.

(d) A qualifying community health center as defined in section 42-5001.

(e) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

(f) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

27. Tangible personal property sold to a person that is subject to tax under this article by reason of being engaged in business classified under the prime contracting classification under section 42-5075, or to a subcontractor working under the control of a prime contractor that is subject to tax under article 1 of this chapter, if the property so sold is any of the following:

(a) Incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business.

(b) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

(c) Incorporated or fabricated by the person into any lake facility development in a commercial enhancement reuse district under conditions prescribed for the deduction allowed by section 42-5075, subsection B, paragraph 8.

28. The sale of a motor vehicle to:

(a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by

1 article 1 of this chapter and if the nonresident has secured a special ninety  
2 day nonresident registration permit for the vehicle as prescribed by sections  
3 28-2154 and 28-2154.01.

4 (b) An enrolled member of an Indian tribe who resides on the Indian  
5 reservation established for that tribe.

6 29. Tangible personal property purchased in this state by a nonprofit  
7 charitable organization that has qualified under section 501(c)(3) of the  
8 United States internal revenue code and that engages in and uses such  
9 property exclusively in programs for mentally or physically handicapped  
10 persons if the programs are exclusively for training, job placement,  
11 rehabilitation or testing.

12 30. Sales of tangible personal property by a nonprofit organization  
13 that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6)  
14 of the internal revenue code if the organization is associated with a major  
15 league baseball team or a national touring professional golfing association  
16 and no part of the organization's net earnings inures to the benefit of any  
17 private shareholder or individual.

18 31. Sales of commodities, as defined by title 7 United States Code  
19 section 2, that are consigned for resale in a warehouse in this state in or  
20 from which the commodity is deliverable on a contract for future delivery  
21 subject to the rules of a commodity market regulated by the United States  
22 commodity futures trading commission.

23 32. Sales of tangible personal property by a nonprofit organization  
24 that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),  
25 501(c)(7) or 501(c)(8) of the internal revenue code if the organization  
26 sponsors or operates a rodeo featuring primarily farm and ranch animals and  
27 no part of the organization's net earnings inures to the benefit of any  
28 private shareholder or individual.

29 33. Sales of seeds, seedlings, roots, bulbs, cuttings and other  
30 propagative material to persons who use those items to commercially produce  
31 agricultural, horticultural, viticultural or floricultural crops in this  
32 state.

33 34. Machinery, equipment, technology or related supplies that are only  
34 useful to assist a person who is physically disabled as defined in section  
35 46-191, has a developmental disability as defined in section 36-551 or has a  
36 head injury as defined in section 41-3201 to be more independent and  
37 functional.

38 35. Sales of tangible personal property that is shipped or delivered  
39 directly to a destination outside the United States for use in that foreign  
40 country.

41 36. Sales of natural gas or liquefied petroleum gas used to propel a  
42 motor vehicle.

43 37. Paper machine clothing, such as forming fabrics and dryer felts,  
44 sold to a paper manufacturer and directly used or consumed in paper  
45 manufacturing.

1        38. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity  
2 sold to a qualified environmental technology manufacturer, producer or  
3 processor as defined in section 41-1514.02 and directly used or consumed in  
4 the generation or provision of on-site power or energy solely for  
5 environmental technology manufacturing, producing or processing or  
6 environmental protection. This paragraph shall apply for fifteen full  
7 consecutive calendar or fiscal years from the date the first paper  
8 manufacturing machine is placed in service. In the case of an environmental  
9 technology manufacturer, producer or processor who does not manufacture  
10 paper, the time period shall begin with the date the first manufacturing,  
11 processing or production equipment is placed in service.

12        39. Sales of liquid, solid or gaseous chemicals used in manufacturing,  
13 processing, fabricating, mining, refining, metallurgical operations, research  
14 and development and, beginning on January 1, 1999, printing, if using or  
15 consuming the chemicals, alone or as part of an integrated system of  
16 chemicals, involves direct contact with the materials from which the product  
17 is produced for the purpose of causing or permitting a chemical or physical  
18 change to occur in the materials as part of the production process. This  
19 paragraph does not include chemicals that are used or consumed in activities  
20 such as packaging, storage or transportation but does not affect any  
21 deduction for such chemicals that is otherwise provided by this section. For  
22 the purposes of this paragraph, "printing" means a commercial printing  
23 operation and includes job printing, engraving, embossing, copying and  
24 bookbinding.

25        40. Through December 31, 1994, personal property liquidation  
26 transactions, conducted by a personal property liquidator. From and after  
27 December 31, 1994, personal property liquidation transactions shall be  
28 taxable under this section provided that nothing in this subsection shall be  
29 construed to authorize the taxation of casual activities or transactions  
30 under this chapter. For the purposes of this paragraph:

31        (a) "Personal property liquidation transaction" means a sale of  
32 personal property made by a personal property liquidator acting solely on  
33 behalf of the owner of the personal property sold at the dwelling of the  
34 owner or upon the death of any owner, on behalf of the surviving spouse, if  
35 any, any devisee or heir or the personal representative of the estate of the  
36 deceased, if one has been appointed.

37        (b) "Personal property liquidator" means a person who is retained to  
38 conduct a sale in a personal property liquidation transaction.

39        41. Sales of food, drink and condiment for consumption within the  
40 premises of any prison, jail or other institution under the jurisdiction of  
41 the state department of corrections, the department of public safety, the  
42 department of juvenile corrections or a county sheriff.

43        42. A motor vehicle and any repair and replacement parts and tangible  
44 personal property becoming a part of such motor vehicle sold to a motor

1 carrier who is subject to a fee prescribed in title 28, chapter 16, article 4  
2 and who is engaged in the business of leasing or renting such property.

3 43. Livestock and poultry feed, salts, vitamins and other additives for  
4 livestock or poultry consumption that are sold to persons who are engaged in  
5 producing livestock, poultry, or livestock or poultry products or who are  
6 engaged in feeding livestock or poultry commercially. For the purposes of  
7 this paragraph, "poultry" includes ratites.

8 44. Sales of implants used as growth promotants and injectable  
9 medicines, not already exempt under paragraph 8 of this subsection, for  
10 livestock or poultry owned by or in possession of persons who are engaged in  
11 producing livestock, poultry, or livestock or poultry products or who are  
12 engaged in feeding livestock or poultry commercially. For the purposes of  
13 this paragraph, "poultry" includes ratites.

14 45. Sales of motor vehicles at auction to nonresidents of this state  
15 for use outside this state if the vehicles are shipped or delivered out of  
16 this state, regardless of where title to the motor vehicles passes or its  
17 free on board point.

18 46. Tangible personal property sold to a person engaged in business and  
19 subject to tax under the transient lodging classification if the tangible  
20 personal property is a personal hygiene item or articles used by human beings  
21 for food, drink or condiment, except alcoholic beverages, which are furnished  
22 without additional charge to and intended to be consumed by the transient  
23 during the transient's occupancy.

24 47. Sales of alternative fuel, as defined in section 1-215, to a used  
25 oil fuel burner who has received a permit to burn used oil or used oil fuel  
26 under section 49-426 or 49-480.

27 48. Sales of materials that are purchased by or for publicly funded  
28 libraries including school district libraries, charter school libraries,  
29 community college libraries, state university libraries or federal, state,  
30 county or municipal libraries for use by the public as follows:

31 (a) Printed or photographic materials, beginning August 7, 1985.

32 (b) Electronic or digital media materials, beginning July 17, 1994.

33 49. Tangible personal property sold to a commercial airline and  
34 consisting of food, beverages and condiments and accessories used for serving  
35 the food and beverages, if those items are to be provided without additional  
36 charge to passengers for consumption in flight. For the purposes of this  
37 paragraph, "commercial airline" means a person holding a federal certificate  
38 of public convenience and necessity or foreign air carrier permit for air  
39 transportation to transport persons, property or United States mail in  
40 intrastate, interstate or foreign commerce.

41 50. Sales of alternative fuel vehicles if the vehicle was manufactured  
42 as a diesel fuel vehicle and converted to operate on alternative fuel and  
43 equipment that is installed in a conventional diesel fuel motor vehicle to  
44 convert the vehicle to operate on an alternative fuel, as defined in section  
45 1-215.

51. Sales of any spirituous, vinous or malt liquor by a person that is licensed in this state as a wholesaler by the department of liquor licenses and control pursuant to title 4, chapter 2, article 1.

52. Sales of tangible personal property to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

53. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

54. COMMERCIAL PHOTOGRAPHY OCCUPATIONS OR BUSINESSES THAT INVOLVE SALES OR TRANSFERS OF TANGIBLE PERSONAL PROPERTY ONLY AS INCONSEQUENTIAL ELEMENTS OF THE SERVICE IF ALL OF THE FOLLOWING APPLY:

(a) THE PURCHASE PRICE OF THE TANGIBLE PERSONAL PROPERTY TO THE BUSINESS REPRESENTS LESS THAN FIFTEEN PER CENT OF THE CHARGE, BILLING OR STATEMENT RENDERED TO THE CUSTOMER IN CONNECTION WITH THE TRANSACTION.

(b) AT THE TIME OF SALE, THE TANGIBLE PERSONAL PROPERTY TRANSFERRED TO THE CUSTOMER IS NOT IN A FORM THAT IS SUBJECT TO RETAIL SALE.

(c) THE CHARGE FOR THE TANGIBLE PERSONAL PROPERTY IS NOT SEPARATELY STATED ON THE CUSTOMER'S INVOICE.

FOR THE PURPOSES OF THIS PARAGRAPH, "COMMERCIAL PHOTOGRAPHY" MEANS A SERVICE BUSINESS INVOLVING THE CREATION OF PHOTOGRAPHIC IMAGES FOR CUSTOMERS PRIMARILY FOR USE IN COMMERCE.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical



1 fiber, coaxial cable and other transmission media which are components of  
2 carrier systems.

3 4. Machinery, equipment or transmission lines used directly in  
4 producing or transmitting electrical power, but not including distribution.  
5 Transformers and control equipment used at transmission substation sites  
6 constitute equipment used in producing or transmitting electrical power.

7 5. Neat animals, horses, asses, sheep, ratites, swine or goats used or  
8 to be used as breeding or production stock, including sales of breedings or  
9 ownership shares in such animals used for breeding or production.

10 6. Pipes or valves four inches in diameter or larger used to transport  
11 oil, natural gas, artificial gas, water or coal slurry, including compressor  
12 units, regulators, machinery and equipment, fittings, seals and any other  
13 part that is used in operating the pipes or valves.

14 7. Aircraft, navigational and communication instruments and other  
15 accessories and related equipment sold to:

16 (a) A person holding a federal certificate of public convenience and  
17 necessity, a supplemental air carrier certificate under federal aviation  
18 regulations (14 Code of Federal Regulations part 121) or a foreign air  
19 carrier permit for air transportation for use as or in conjunction with or  
20 becoming a part of aircraft to be used to transport persons, property or  
21 United States mail in intrastate, interstate or foreign commerce.

22 (b) Any foreign government for use by such government outside of this  
23 state.

24 (c) Persons who are not residents of this state and who will not use  
25 such property in this state other than in removing such property from this  
26 state. This subdivision also applies to corporations that are not  
27 incorporated in this state, regardless of maintaining a place of business in  
28 this state, if the principal corporate office is located outside this state  
29 and the property will not be used in this state other than in removing the  
30 property from this state.

31 8. Machinery, tools, equipment and related supplies used or consumed  
32 directly in repairing, remodeling or maintaining aircraft, aircraft engines  
33 or aircraft component parts by or on behalf of a certificated or licensed  
34 carrier of persons or property.

35 9. Railroad rolling stock, rails, ties and signal control equipment  
36 used directly to transport persons or property.

37 10. Machinery or equipment used directly to drill for oil or gas or  
38 used directly in the process of extracting oil or gas from the earth for  
39 commercial purposes.

40 11. Buses or other urban mass transit vehicles which are used directly  
41 to transport persons or property for hire or pursuant to a governmentally  
42 adopted and controlled urban mass transportation program and which are sold  
43 to bus companies holding a federal certificate of convenience and necessity  
44 or operated by any city, town or other governmental entity or by any person

1 contracting with such governmental entity as part of a governmentally adopted  
2 and controlled program to provide urban mass transportation.

3 12. Groundwater measuring devices required under section 45-604.

4 13. New machinery and equipment consisting of tractors, tractor-drawn  
5 implements, self-powered implements, machinery and equipment necessary for  
6 extracting milk, and machinery and equipment necessary for cooling milk and  
7 livestock, and drip irrigation lines not already exempt under paragraph 6 of  
8 this subsection and that are used for commercial production of agricultural,  
9 horticultural, viticultural and floricultural crops and products in this  
10 state. For the purposes of this paragraph:

11 (a) "New machinery and equipment" means machinery and equipment which  
12 have never been sold at retail except pursuant to leases or rentals which do  
13 not total two years or more.

14 (b) "Self-powered implements" includes machinery and equipment that  
15 are electric-powered.

16 14. Machinery or equipment used in research and development. For the  
17 purposes of this paragraph, "research and development" means basic and  
18 applied research in the sciences and engineering, and designing, developing  
19 or testing prototypes, processes or new products, including research and  
20 development of computer software that is embedded in or an integral part of  
21 the prototype or new product or that is required for machinery or equipment  
22 otherwise exempt under this section to function effectively. Research and  
23 development do not include manufacturing quality control, routine consumer  
24 product testing, market research, sales promotion, sales service, research in  
25 social sciences or psychology, computer software research that is not  
26 included in the definition of research and development, or other  
27 nontechnological activities or technical services.

28 15. Machinery and equipment that are purchased by or on behalf of the  
29 owners of a soundstage complex and primarily used for motion picture,  
30 multimedia or interactive video production in the complex. This paragraph  
31 applies only if the initial construction of the soundstage complex begins  
32 after June 30, 1996 and before January 1, 2002 and the machinery and  
33 equipment are purchased before the expiration of five years after the start  
34 of initial construction. For the purposes of this paragraph:

35 (a) "Motion picture, multimedia or interactive video production"  
36 includes products for theatrical and television release, educational  
37 presentations, electronic retailing, documentaries, music videos, industrial  
38 films, CD-ROM, video game production, commercial advertising and television  
39 episode production and other genres that are introduced through developing  
40 technology.

41 (b) "Soundstage complex" means a facility of multiple stages including  
42 production offices, construction shops and related areas, prop and costume  
43 shops, storage areas, parking for production vehicles and areas that are  
44 leased to businesses that complement the production needs and orientation of  
45 the overall facility.

1        16. Tangible personal property that is used by either of the following  
2 to receive, store, convert, produce, generate, decode, encode, control or  
3 transmit telecommunications information:

4        (a) Any direct broadcast satellite television or data transmission  
5 service that operates pursuant to 47 Code of Federal Regulations parts 25 and  
6 100.

7        (b) Any satellite television or data transmission facility, if both of  
8 the following conditions are met:

9        (i) Over two-thirds of the transmissions, measured in megabytes,  
10 transmitted by the facility during the test period were transmitted to or on  
11 behalf of one or more direct broadcast satellite television or data  
12 transmission services that operate pursuant to 47 Code of Federal Regulations  
13 parts 25 and 100.

14        (ii) Over two-thirds of the transmissions, measured in megabytes,  
15 transmitted by or on behalf of those direct broadcast television or data  
16 transmission services during the test period were transmitted by the facility  
17 to or on behalf of those services.

18 For the purposes of subdivision (b) of this paragraph, "test period" means  
19 the three hundred sixty-five day period beginning on the later of the date on  
20 which the tangible personal property is purchased or the date on which the  
21 direct broadcast satellite television or data transmission service first  
22 transmits information to its customers.

23        17. Clean rooms that are used for manufacturing, processing,  
24 fabrication or research and development, as defined in paragraph 14 of this  
25 subsection, of semiconductor products. For the purposes of this paragraph,  
26 "clean room" means all property that comprises or creates an environment  
27 where humidity, temperature, particulate matter and contamination are  
28 precisely controlled within specified parameters, without regard to whether  
29 the property is actually contained within that environment or whether any of  
30 the property is affixed to or incorporated into real property. Clean room:

31        (a) Includes the integrated systems, fixtures, piping, movable  
32 partitions, lighting and all property that is necessary or adapted to reduce  
33 contamination or to control airflow, temperature, humidity, chemical purity  
34 or other environmental conditions or manufacturing tolerances, as well as the  
35 production machinery and equipment operating in conjunction with the clean  
36 room environment.

37        (b) Does not include the building or other permanent, nonremovable  
38 component of the building that houses the clean room environment.

39        18. Machinery and equipment used directly in the feeding of poultry,  
40 the environmental control of housing for poultry, the movement of eggs within  
41 a production and packaging facility or the sorting or cooling of eggs. This  
42 exemption does not apply to vehicles used for transporting eggs.

43        19. Machinery or equipment, including related structural components,  
44 that is employed in connection with manufacturing, processing, fabricating,  
45 job printing, refining, mining, natural gas pipelines, metallurgical

operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

20. Machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state and that are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

21. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

22. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2014 by a qualified business under section 41-1516 for harvesting or the initial processing of qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this deduction, the qualified business at the time of purchase must present its certification approved by the department.

23. Machinery, equipment and other tangible personal property used directly in motion picture production by a motion picture production company. To qualify for this deduction, at the time of purchase, the motion picture production company must present to the retailer its certificate that is issued pursuant to section 42-5009, subsection H and that establishes its qualification for the deduction.

C. The deductions provided by subsection B of this section do not include sales of:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

1           3. Office equipment, furniture and supplies.

2           4. Tangible personal property used in selling or distributing  
3 activities, other than the telecommunications transmissions described in  
4 subsection B, paragraph 16 of this section.

5           5. Motor vehicles required to be licensed by this state, except buses  
6 or other urban mass transit vehicles specifically exempted pursuant to  
7 subsection B, paragraph 11 of this section, without regard to the use of such  
8 motor vehicles.

9           6. Shops, buildings, docks, depots and all other materials of whatever  
10 kind or character not specifically included as exempt.

11           7. Motors and pumps used in drip irrigation systems.

12           D. In addition to the deductions from the tax base prescribed by  
13 subsection A of this section, there shall be deducted from the tax base the  
14 gross proceeds of sales or gross income derived from sales of machinery,  
15 equipment, materials and other tangible personal property used directly and  
16 predominantly to construct a qualified environmental technology  
17 manufacturing, producing or processing facility as described in section  
18 41-1514.02. This subsection applies for ten full consecutive calendar or  
19 fiscal years after the start of initial construction.

20           E. In computing the tax base, gross proceeds of sales or gross income  
21 from retail sales of heavy trucks and trailers does not include any amount  
22 attributable to federal excise taxes imposed by 26 United States Code section  
23 4051.

24           F. In computing the tax base, gross proceeds of sales or gross income  
25 from the sale of use fuel, as defined in section 28-5601, does not include  
26 any amount attributable to federal excise taxes imposed by 26 United States  
27 Code section 4091.

28           G. If a person is engaged in an occupation or business to which  
29 subsection A of this section applies, the person's books shall be kept so as  
30 to show separately the gross proceeds of sales of tangible personal property  
31 and the gross income from sales of services, and if not so kept the tax shall  
32 be imposed on the total of the person's gross proceeds of sales of tangible  
33 personal property and gross income from services.

34           H. If a person is engaged in the business of selling tangible personal  
35 property at both wholesale and retail, the tax under this section applies  
36 only to the gross proceeds of the sales made other than at wholesale if the  
37 person's books are kept so as to show separately the gross proceeds of sales  
38 of each class, and if the books are not so kept, the tax under this section  
39 applies to the gross proceeds of every sale so made.

40           I. A person who engages in manufacturing, baling, crating, boxing,  
41 barreling, canning, bottling, sacking, preserving, processing or otherwise  
42 preparing for sale or commercial use any livestock, agricultural or  
43 horticultural product or any other product, article, substance or commodity  
44 and who sells the product of such business at retail in this state is deemed,  
45 as to such sales, to be engaged in business classified under the retail

1 classification. This subsection does not apply to businesses classified  
2 under the:

- 3 1. Transporting classification.
- 4 2. Utilities classification.
- 5 3. Telecommunications classification.
- 6 4. Pipeline classification.
- 7 5. Private car line classification.
- 8 6. Publication classification.
- 9 7. Job printing classification.
- 10 8. Prime contracting classification.
- 11 9. Owner builder sales classification.
- 12 10. Restaurant classification.

13 J. The gross proceeds of sales or gross income derived from the  
14 following shall be deducted from the tax base for the retail classification:

- 15 1. Sales made directly to the United States government or its  
16 departments or agencies by a manufacturer, modifier, assembler or repairer.
- 17 2. Sales made directly to a manufacturer, modifier, assembler or  
18 repairer if such sales are of any ingredient or component part of products  
19 sold directly to the United States government or its departments or agencies  
20 by the manufacturer, modifier, assembler or repairer.

21 3. Overhead materials or other tangible personal property that is used  
22 in performing a contract between the United States government and a  
23 manufacturer, modifier, assembler or repairer, including property used in  
24 performing a subcontract with a government contractor who is a manufacturer,  
25 modifier, assembler or repairer, to which title passes to the government  
26 under the terms of the contract or subcontract.

27 4. Sales of overhead materials or other tangible personal property to  
28 a manufacturer, modifier, assembler or repairer if the gross proceeds of  
29 sales or gross income derived from the property by the manufacturer,  
30 modifier, assembler or repairer will be exempt under paragraph 3 of this  
31 subsection.

32 K. There shall be deducted from the tax base fifty per cent of the  
33 gross proceeds or gross income from any sale of tangible personal property  
34 made directly to the United States government or its departments or agencies,  
35 which is not deducted under subsection J of this section.

36 L. The department shall require every person claiming a deduction  
37 provided by subsection J or K of this section to file on forms prescribed by  
38 the department at such times as the department directs a sworn statement  
39 disclosing the name of the purchaser and the exact amount of sales on which  
40 the exclusion or deduction is claimed.

41 M. In computing the tax base, gross proceeds of sales or gross income  
42 does not include:

- 43 1. A manufacturer's cash rebate on the sales price of a motor vehicle  
44 if the buyer assigns the buyer's right in the rebate to the retailer.
- 45 2. The waste tire disposal fee imposed pursuant to section 44-1302.

1           N. There shall be deducted from the tax base the amount received from  
2 sales of solar energy devices. The retailer shall register with the  
3 department as a solar energy retailer. By registering, the retailer  
4 acknowledges that it will make its books and records relating to sales of  
5 solar energy devices available to the department for examination.

6           O. In computing the tax base in the case of the sale or transfer of  
7 wireless telecommunications equipment as an inducement to a customer to enter  
8 into or continue a contract for telecommunications services that are taxable  
9 under section 42-5064, gross proceeds of sales or gross income does not  
10 include any sales commissions or other compensation received by the retailer  
11 as a result of the customer entering into or continuing a contract for the  
12 telecommunications services.

13           P. For the purposes of this section, a sale of wireless  
14 telecommunications equipment to a person who holds the equipment for sale or  
15 transfer to a customer as an inducement to enter into or continue a contract  
16 for telecommunications services that are taxable under section 42-5064 is  
17 considered to be a sale for resale in the regular course of business.

18           Q. Retail sales of prepaid calling cards or prepaid authorization  
19 numbers for telecommunications services, including sales of reauthorization  
20 of a prepaid card or authorization number, are subject to tax under this  
21 section.

22           R. For the purposes of this section, the diversion of gas from a  
23 pipeline by a person engaged in the business of:

24           1. Operating a natural or artificial gas pipeline, for the sole  
25 purpose of fueling compressor equipment to pressurize the pipeline, is not a  
26 sale of the gas to the operator of the pipeline.

27           2. Converting natural gas into liquefied natural gas, for the sole  
28 purpose of fueling compressor equipment used in the conversion process, is  
29 not a sale of gas to the operator of the compressor equipment.

30           S. If a seller is entitled to a deduction pursuant to subsection B,  
31 paragraph 16, subdivision (b) of this section, the department may require the  
32 purchaser to establish that the requirements of subsection B, paragraph 16,  
33 subdivision (b) of this section have been satisfied. If the purchaser cannot  
34 establish that the requirements of subsection B, paragraph 16, subdivision  
35 (b) of this section have been satisfied, the purchaser is liable in an amount  
36 equal to any tax, penalty and interest which the seller would have been  
37 required to pay under article 1 of this chapter if the seller had not made a  
38 deduction pursuant to subsection B, paragraph 16, subdivision (b) of this  
39 section. Payment of the amount under this subsection exempts the purchaser  
40 from liability for any tax imposed under article 4 of this chapter and  
41 related to the tangible personal property purchased. The amount shall be  
42 treated as transaction privilege tax to the purchaser and as tax revenues  
43 collected from the seller to designate the distribution base pursuant to  
44 section 42-5029.

1           T. For the purposes of section 42-5032.01, the department shall  
2 separately account for revenues collected under the retail classification  
3 from businesses selling tangible personal property at retail:

4           1. On the premises of a multipurpose facility that is owned, leased or  
5 operated by the tourism and sports authority pursuant to title 5, chapter 8.

6           2. At professional football contests that are held in a stadium  
7 located on the campus of an institution under the jurisdiction of the Arizona  
8 board of regents.

9           U. In computing the tax base for the sale of a motor vehicle to a  
10 nonresident of this state, if the purchaser's state of residence allows a  
11 corresponding use tax exemption to the tax imposed by article 1 of this  
12 chapter and the rate of the tax in the purchaser's state of residence is  
13 lower than the rate prescribed in article 1 of this chapter or if the  
14 purchaser's state of residence does not impose an excise tax, and the  
15 nonresident has secured a special ninety day nonresident registration permit  
16 for the vehicle as prescribed by sections 28-2154 and 28-2154.01, there shall  
17 be deducted from the tax base a portion of the gross proceeds or gross income  
18 from the sale so that the amount of transaction privilege tax that is paid in  
19 this state is equal to the excise tax that is imposed by the purchaser's  
20 state of residence on the nonexempt sale or use of the motor vehicle.

21           V. For the purposes of this section:

22           1. "Aircraft" includes:

23           (a) An airplane flight simulator that is approved by the federal  
24 aviation administration for use as a phase II or higher flight simulator  
25 under appendix H, 14 Code of Federal Regulations part 121.

26           (b) Tangible personal property that is permanently affixed or attached  
27 as a component part of an aircraft that is owned or operated by a  
28 certificated or licensed carrier of persons or property.

29           2. "Other accessories and related equipment" includes aircraft  
30 accessories and equipment such as ground service equipment that physically  
31 contact aircraft at some point during the overall carrier operation.

32           3. "Selling at retail" means a sale for any purpose other than for  
33 resale in the regular course of business in the form of tangible personal  
34 property, but transfer of possession, lease and rental as used in the  
35 definition of sale mean only such transactions as are found on investigation  
36 to be in lieu of sales as defined without the words lease or rental.

37           W. For the purposes of subsection J of this section:

38           1. "Assembler" means a person who unites or combines products, wares  
39 or articles of manufacture so as to produce a change in form or substance  
40 without changing or altering the component parts.

41           2. "Manufacturer" means a person who is principally engaged in the  
42 fabrication, production or manufacture of products, wares or articles for use  
43 from raw or prepared materials, imparting to those materials new forms,  
44 qualities, properties and combinations.



1           3. "Modifier" means a person who reworks, changes or adds to products,  
2 wares or articles of manufacture.

3           4. "Overhead materials" means tangible personal property, the gross  
4 proceeds of sales or gross income derived from which would otherwise be  
5 included in the retail classification, and which are used or consumed in the  
6 performance of a contract, the cost of which is charged to an overhead  
7 expense account and allocated to various contracts based upon generally  
8 accepted accounting principles and consistent with government contract  
9 accounting standards.

10          5. "Repairer" means a person who restores or renews products, wares or  
11 articles of manufacture.

12          6. "Subcontract" means an agreement between a contractor and any  
13 person who is not an employee of the contractor for furnishing of supplies or  
14 services that, in whole or in part, are necessary to the performance of one  
15 or more government contracts, or under which any portion of the contractor's  
16 obligation under one or more government contracts is performed, undertaken or  
17 assumed and that includes provisions causing title to overhead materials or  
18 other tangible personal property used in the performance of the subcontract  
19 to pass to the government or that includes provisions incorporating such  
20 title passing clauses in a government contract into the subcontract.

21          Sec. 2. Retroactivity; limitation on refunds; nonseverability

22          A. Section 42-5061, subsection A, paragraph 54, Arizona Revised  
23 Statutes, as added by this act, applies retroactively to taxable periods  
24 beginning from and after August 9, 1993.

25          B. Any claim for refund of transaction privilege tax based on the  
26 retroactive application of section 42-5061, subsection A, paragraph 54,  
27 Arizona Revised Statutes, as amended by this act, must be submitted to the  
28 department of revenue on or before December 31, 2007, pursuant to section  
29 42-1118, Arizona Revised Statutes. A failure to file a claim on or before  
30 December 31, 2007 constitutes a waiver of the claim for refund under this  
31 section.

32          C. The aggregate amount of refunds under this section shall not exceed  
33 ten thousand dollars including interest. If the aggregate amount of the  
34 claims under this section that are ultimately determined to be correct  
35 exceeds ten thousand dollars, each claim shall be proportionately reduced so  
36 that the total refund amount equals ten thousand dollars. Amounts due under  
37 this section shall not be refunded unless the taxpayer requesting the refund  
38 provides evidence satisfactory to the department of revenue that amounts of  
39 tax and interest collected from other persons by the taxpayer will be  
40 returned to those persons.

41          D. If any part of this section is finally adjudicated to be invalid,  
42 the entire section is void. The provisions of this section are intended to  
43 be nonseverable.